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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,358	11/26/2001	Jules Zecchino	2870/566	2755

7590

07/21/2003

KAREN A. LOWNEY, ESQ.
ESTÉE LAUDER COMPANIES
125 PINELAWN ROAD
MELVILLE, NY 11747

EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 07/21/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,358

Applicant(s)

JULES ZECCHINO ET AL

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Examiner acknowledges receipt of request for continued examination under 37 CFR 1.114 and preliminary amendment filed 05/16/03. No claim is amended.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/16/03 has been entered.

2. Applicants' arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheeler (WO 97/32559).

Wheeler teaches cosmetic or pharmaceutical composition comprising a stable dispersion that comprises oil-based bi-liquid foam and an aqueous gel. The oil-based bi-liquid foam of Wheeler comprises from 1% to 80% by weight of the total formulation. The composition of Wheeler also comprises silicone oils wherein the oils can be cyclomethicone, dimethicone, dimethicone copolyol, lanolin and dimethiconol. Silicone oils in examples 2-4 and 6 is in

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amounts of 3.5% and in example 6, its 6%. Wheeler teaches a formulation further comprising from 0.05% to 0.5% of surfactant and active ingredient in the aqueous or oily phase. Wheeler teaches that the low level of surfactant incorporated into the formulation comprises quaternary ammonium sulfonium salts, amphoteric surfactant, anionic surfactant, alpha-olefin sulfonate, and ester-linked sulfonate. Salts of cross-linked polymers of acrylic acid (carbomers), glyceryl polymethacrylates, or copolymers of polyoxyethylene/polyoxypropylene in mixtures with the previously listed surfactants may serve as gelling agents. Wheeler's composition (example 3) comprises citric acid and the composition is adjusted to pH 6.5 (less than pH 7). See page 3, paragraph 2 to page 5 paragraph 2. Instant claims 1 and 12 are directed to a composition and gelling the composition with polymeric sulfonic acid or poly (acryldimethyltauramide-co-vinylformamide) carries no patentable weight in a composition claim because it is not critical how the composition is made in a composition claim. Instant claims 2, 6, 7 and 18 are directed to how the compositions of instant claims 1 and 12 are gelled and in a composition claim it is not critical how the composition is made. Regarding claims 9, 10, 14 and 15, a point in the amount of the oil-based bi-liquid foam of 1% to 80% of the total formulation in Wheeler anticipates a point in the amount of 50-90%. Regarding instant claims 11 and 17, the prior art teaches a surfactant in amount of between 0.05 and 0.5% and this amount is less than about 1% that is recited in said instant claims 11 and 17. Wheeler anticipates the claims.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler (WO 97/32559) in view of Clariant product brochure.

Wheeler teaches the preparation of bi-liquid foam by combining oil-based biliquid foam and an aqueous gel, CARBOPOL gelling polymer and the pH is adjusted to 6.5 with citric acid (page 6, lines 1-10 and 20-23 and example 3). However, Wheeler does not use polymeric sulfonic acid as a gelling agent. However, Clariant product brochure teaches Aristoflex AVC or copolymer of polyacryldimethyltauramide and vinylformamide gelling agent for aqueous systems and thickening agent for oil-in-water emulsions. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to prepare the bi-liquid foam by gelling the composition with CARBOMER polymer according to the teachings of Wheeler. One having ordinary skill in the art would have been motivated to substitute CARBOMER gelling agent with another gelling agent such as polyacryldimethyltauramide-co-vinylformamide (Aristoflex) with the expectation that the aqueous composition will be gelled.

7. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
Patent Examiner
Tech. Center 1600
July 16, 2003

